IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9649 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJNARAYAN BAIJNATH YADAV
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR MAHENDRA K PATEL for Applicant.
MR PRADIP BHATE, APP for Respondent No. 1.
MR AB MUNSHI for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 09/12/2005

ORAL ORDER

RULE. Mr.Pradip Bhate, learned APP, waives service of notice of rule on behalf of respondent No.1 and Mr.Munshi, learned advocate waives service of notice of rule on behalf of respondent No.2. With the consent of the parties, this matter is taken up for final hearing today.

By filing this application under Section 482 of the Criminal Procedure Code, the applicant has prayed that the complaint instituted by the respondent No.2 herein before learned Judicial Magistrate, First Class, Khedbrahma, being Criminal Case No.110 of 2004 may be quashed and set aside. As per the averments made in the complaint, the applicant-accused had taken loan of Rs.1,50,000/- and gave post-dated cheque of 31st March, 2003 of his account No.429. On presentation, cheque has bounced back with an endorsement "fund insufficient". The complainant, thereafter, gave notice through his advocate and after waiting for requisite period, he filed the aforesaid complaint under Section 138 of the Negotiable Instruments Act. Upon filing of the complaint, learned Magistrate has issued summons against the present applicant.

Learned advocate for the applicant submitted that the applicant has not at all drawn any cheque nor he is signatory to the cheque in question. He further submitted that Account No.429 of the Indian Bank is not belonging to the present applicant. Therefore, he submitted that instead of filing complaint against the real person, the complainant has filed complaint against the present applicant and on the face of it, this complaint is not tenable and the same is required to be quashed.

Mr.Munshi, learned advocate for respondent No.2 submitted that the cheque in question is signed by Vijay Narayan Yadav. He frankly submitted that the cheque is not signed by the present applicant - Rajnarayan Yadav. He, however, submitted that there being a family business perhaps the applicant also may be the beneficiary of the amount in question.

The applicant had applied before the learned Magistrate for dropping the proceedings and pointed out the fact that he is not signatory to the cheque in question. However, learned Magistrate found that since the process is issued by the Court, the Court has no power to recall such process as the Court has no power to review its own order.

Learned APP has submitted that so far as summons triable case is concerned, there is no provision for discharge, however, the applicant can certainly invoke the jurisdiction of this Court under Section 482 of the Criminal Procedure Code.

After hearing the learned counsel for the applicant and the complainant as well as learned APP, I am of the view that filing of this complaint is nothing but abuse of process of law, as the following aspects are not in dispute :

(i) The cheque is signed by one Vijay Narayan Yadav.

(ii) The applicant is not signatory to the cheque.

(iii) There is nothing on record to show that the applicant was managing the affairs of the business or he was concerned with the business in any manner.

(iv) From the record, it is found that the cheque is signed by one Vijay Narayan Yadav, who, as per the submission of learned advocate for the applicant, is brother of the applicant.

Before filing the complaint or issuing statutory notice, appropriate care should have been taken by the complainant by verifying the signature of the person and should have booked appropriate person, who has signed the cheque. In my view, the principle of vicarious liability

cannot be made applicable in criminal matters. There is nothing on record to show that the applicant was in any way connected with the business of his brother or even remotely he was connected with the transaction in question. The transaction has taken place between the complainant and one Vijay Narayan Yadav. The complainant without proper verification has filed the complaint instead of filing a complaint against the real accused. Unfortunately, the learned Magistrate has also issued process in a mechanical manner without verifying the facts properly. Filing of such complaint is, therefore, nothing but abuse process of law. An innocent person cannot be subjected to criminal proceedings when he is not connected with the business in any manner. Considering the aforesaid aspect of the matter, complaint of the complainant is required to be quashed by exercising powers under Section 482 of the Criminal Procedure Code.

Mr.Munshi, learned advocate for the original complainant submitted that the original complainant may be permitted to take appropriate proceedings against said Vijay Narayan Yadav. It is needless to say that the original complainant can avail appropriate remedy in accordance with law.

Accordingly, this application is allowed. Complaint being Criminal Case No.110 of 2004 pending before Judicial Magistrate, First Class, Khedbrahma, is quashed and summons issued by the learned Magistrate on the said complaint is also quashed. Rule is made absolute.

(P.B.MAJMUDAR, J.)

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